

Date of decision: 08/05/97

COMMON ORAL JUDGMENT : (Per: M.H. Kadri, J.)

Admit. Learned advocate Mr. S.M.Amin waives service of notice of admission on behalf of respondents-original claimants. By the consent of the learned advocates for the parties, this group of First Appeals is taken up for final hearing.

As the common questions of law and facts are involved in this group of First Appeals, they are disposed of by the common judgment.

Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated February 15, 1996, passed by the learned Extra Assistant Judge, Kheda, at Nadiad, in the group of Land Reference Cases Nos. 1 of 1988 to 34 of 1988.

Lands of the respondents-claimants situated in the outskirts of village Khandhli of Anand Taluka, Dist Kheda, came to be acquired for the purpose of construction of canal by notification under Section 4 of the Act, which was published in the official gazette on September 30, 1982. After following the necessary procedure under the Act, the Land Acquisition Officer has declared his award on September 10, 1986 and awarded compensation for the acquired lands to the claimants at the rate of Rs.2.60 ps per sq.mtr.

The respondents-claimants, feeling aggrieved by the said award, filed applications under Section 18 of the Act to refer the matter to the District Court, Kheda, at Nadiad, which were numbered as Land Acquisition Reference Nos. 1 of 1988 to 34 of 1988. The above stated land acquisition references came to be transferred to the court of the learned Extra Assistant Judge, Kheda, at Nadiad.

Before the reference court, on behalf of the claimants, one Vitthalbhai Khodabhai Patel was examined at Exh.64. The claimants produced documentary evidence in the nature of extracts of revenue records of their lands and the previous award with regard to the acquired lands of village Mogari, which was produced at Exh.61.

On behalf of the opponents, the Land Acquisition Officer, Shri Nasiruddin Sansuddin Nasri, was examined at

Exh.66.

The learned Extra Assistant Judge, after appreciating oral as well as documentary evidence, mainly relied upon Exh.61, which was previous award in Land Acquisition References Nos. 139 to 189 of 1989, rendered by the learned Second Extra Assistant Judge, Nadiad, on January 31, 1992, with respect to lands of village Mogari. Notification under Section 4(1) of the Act with respect to lands, which were the subject matter of award Exh.61, was published on October 20, 1979. In award Exh.61, market price of the acquired lands situated at village Mogari was determined at Rs.14.75 ps per sq.mtr.

In the present group of references, the reference court had relied upon award (Exh.61) in determining the market price of the acquired lands. The reference court had compared the acquired lands with the lands which were subject matter of award Exh.61 and came to the conclusion that the market price of the acquired land can be determined at Rs.14.14 ps per sq.mtr. The lands which were the subject matter of award Exh.61 are situated at village Mogari which is 3.1/2 km. away from village Khandhli. Bearing in mind the distance between the village Mogari and village Khandhli, the reference court, even though the notification under Section 4(1) of the Act in the present case was published subsequently to the notification which was subject matter of award Exh.61, awarded compensation at Rs.14 per sq.mtr. The Land Acquisition Officer had admitted in his evidence that village Khandhli and village Mogari are situated in nearby areas and the lands are similar in nature. It is settled legal principle that previous award in land acquisition reference case is the relevant piece of evidence in subsequent cases provided that the land in question is in the neighbourhood and notifications in both the cases are issued in proximity of time and the lands are having similar quality and fertility. The evidence of the Land Acquisition Officer clearly establishes that village Mogari and village Khandhli are situated in the same area and their limits are touching each other. According to his evidence, lands of both the villages are similar in quality. In our opinion, the learned reference Judge was justified in relying upon award Exh.61 for determining the market price of the acquired land. In our opinion, the market price determined by the reference court is on the lower side, because notification for the lands which were subject matter of award Exh.61 was published in the year 1979, whereas notification of the acquired lands which are subject matter of the present appeals was published in

the year 1982.

We have enquired from the learned Government Pleader, Mr.Desai, as to whether the State had challenged the award Exh.61 in the higher forum. The learned Government Pleader made a statement that award Exh.61 was challenged in this court by filing First Appeal, but, as per the instruction of the Legal Department, the said First Appeals were not prosecuted further and the registration was got refused before admission stage. In view of the statement made by the learned Government Pleader, in our opinion, award Exh.61 had become final.

The witness for the claimant, Vitthalbhai Khodabhai Patel (Exh.64), had given description of the lands under acquisition by deposing that the claimants used to take three crops in a year and the lands were irrigated lands. In our opinion, the market price determined by the reference court at Rs.14 per sq.mtr is quite just and adequate and, therefore, the finding of the learned reference Judge fixing the market price at Rs.14/- per sq.mtr requires to be confirmed.

The reference court has awarded to the claimants severance charge at 12%%, because, by the acquisition, some lands have become small parcels, which have become useless for cultivation. In our opinion, there was no evidence led by the claimants before the reference court in support of their claims of severance charges. The learned advocate for the respondents-claimants has also fairly conceded that the award of the reference court with regard to severance charge deserves to be set aside. Accordingly, we disallow the severance charge at 12% as awarded by the reference court.

We clarify that the claimants shall not be entitled to statutory interest under Section 28 of the Act on the additional amount under Section 23(1-A) of the Act and on the amount of solatium under Section 23(2) of the Act. It is also clarified that the claimants shall not be entitled to solatium on the additional amount under Section 23(1-A) of the Act.

With these clarifications and modification as indicated above, the appeals are partly allowed. There shall be no order as to costs.

(swamy)

